

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

James Wellington,
Plaintiff

v.

Civil No. 04-cv-478-SM

Acting Warden of the
Northern New Hampshire
Correctional Facility,
Defendant

O R D E R

Petitioner has filed a motion to reconsider (document no. 15) the court's denial of his earlier motion to proceed in forma pauperis (document no. 12). That motion to reconsider is granted. Having reviewed the matter, it is apparent that the court erroneously juxtaposed two electronic rulings in ECF on two of petitioner's motions that were submitted to the court electronically together. Thus, the motion to proceed in forma pauperis was marked "denied" when it should have been marked "granted." In addition, however, the other motion - for a certificate of appealability (document no. 11) - was erroneously marked "granted" when it was intended to be marked "denied." In fairness to petitioner, the court has revisited and considered anew his earlier motion for a certificate of appealability, and has carefully reviewed the court's order and opinion granting

summary judgment to defendant. The court reaffirms its earlier intended ruling. But for an administrative error by the undersigned judge, the ruling on petitioner's request for a certificate of appealability would have been docketed as "denied," and that error shall be corrected. In addition, having sua sponte reconsidered the matter on the merits, as well as identifying the administrative error, the court reaffirms that the motion for a certificate of appealability is denied; petitioner failed to make a substantial showing of the denial of a constitutional right. Obviously, however, nothing prevents the petitioner from seeking a certificate of appealability from the United States Court of Appeals for the First Circuit. The motion to proceed in forma pauperis (document no. 12) is granted. The motion for a certificate of appealability (document no. 11) is denied."

SO ORDERED.


Steven J. McAuliffe
Chief Judge

February 17, 2006

cc: David M. Rothstein, Esq.
Susan P. McGinnis, Esq.